

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CIVIL ACTION NO 16-MD-2738 (FLW) (LHG)

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IN RE JOHNSON & JOHNSON : TRANSCRIPT OF
POWDER PRODUCTS MARKETING, : STATUS CONFERENCE
SALES PRACTICES. : MARCH 6, 2018
----- :

CLARKSON S. FISHER UNITED STATES COURTHOUSE
402 EAST STATE STREET, TRENTON, NJ 08608

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On Behalf of the Plaintiffs Steering Committee

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C E R T I F I C A T E

PURSUANT TO TITLE 28, U.S.C., SECTION 753, THE
FOLLOWING TRANSCRIPT IS CERTIFIED TO BE AN ACCURATE
TRANSCRIPTION OF MY STENOGRAPHIC NOTES IN THE
ABOVE-ENTITLED MATTER.

S/Vincent Russoniello
VINCENT RUSSONIELLO, CCR
OFFICIAL U.S. COURT REPORTER

1 (In open court.)

2 THE CLERK: All rise.

3 JUDGE WOLFSON: Thank you.

4 I understand we have some new players today
5 entering appearances with me that are going to be
6 speaking.

7 Who do we have for plaintiff? Anyone?

8 MS. PARFITT: Your Honor, Daniel Lapinski will
9 be speaking, but he's been a player.

10 JUDGE WOLFSON: I understand. But he hasn't
11 come forward and talked to me before.

12 And on the defense side? Anyone?

13 MR. LOCKE: Yes, your Honor, we have a couple
14 of new New Jersey counsel with us.

15 MS. TAYLOR: Good morning, your Honor.

16 Alexandra Taylor from Barry, McTiernan &
17 Wedinger. We'll be local counsel for PCPC.

18 MS. CHEONG: Good morning, your Honor.

19 My name is Jennifer Cheong. I'm also with
20 Barry, McTiernan & Wedinger.

21 JUDGE WOLFSON: All right. Thank you.

22 We don't have a lot on the agenda today, but
23 there are a couple of important issues that I want to
24 address with you.

25 First of all, I understand with regard to

1 document production, there are some issues as to
2 privilege as to some of the documents that you want
3 resolved before the 30(b)(6) depositions begin.

4 Correct?

5 MS. SHARKO: Yes.

6 JUDGE WOLFSON: And that's still being
7 discussed and I guess then you will be presenting it
8 to Judge Pisano.

9 MR. TISI: Yes, your Honor.

10 JUDGE WOLFSON: All right.

11 I guess in the midst of these discussions,
12 defendants are taking the position that you haven't
13 identified specific documents, but categories or
14 general. Is that right? Is that your position, Ms.
15 Sharko?

16 MS. SHARKO: Yes. They gave us a long list of
17 objections on the privilege log and we were somewhat
18 surprised to see in the draft joint report some
19 special category.

20 I'm not sure how they could actually match
21 documents up into that category. But if they want to
22 prioritize those, just let us know what they are and
23 we'll go to work on them.

24 MR. TISI: We'll do that, your Honor.

25 JUDGE WOLFSON: Fine. So that's coming up

1 next for Judge Pisano.

2 Let me talk about I think what is really the
3 largest issue for you today, which is going to be
4 what's been filed as an appeal from Judge Pisano's
5 last order. We had discussion about it the last time
6 that you were in.

7 I have received the appeal and I've gotten a
8 response from J&J, and I think sort of what I would
9 call the "me too" letters from the other parties
10 joining in J&J's letter. So it's been briefed and I'm
11 ready to talk about it today.

12 First of all, what I want to start with is, so
13 it will be clear for the remainder of any kind of
14 reviews you might have from Judge Pisano, there was
15 some dispute in the letters as to what the standard of
16 review should be in reviewing Judge Pisano's ruling.
17 Of course everyone accepts the fact that under Rule 53
18 that anything that's an issue of law or a finding of
19 fact is a de novo review.

20 Essentially, the position being taken by the
21 defendant in this case is that his rulings with regard
22 to these depositions were in the nature of procedural
23 rulings and subject to the abuse of discretion
24 standard. That was basically your argument. Correct?

25 MS. SHARKO: Yes.

1 JUDGE WOLFSON: I disagree. I think that
2 those are not procedural rulings. I've done some
3 research, or at least my chambers has done some
4 research, and what has been defined by some of the
5 case law is what is a procedural matter pertains to
6 the decisions that are made by a Special Master that
7 involve the manner in which the Master conducted the
8 proceedings.

9 For example, in deciding the format in which
10 you'll hear the arguments or the issues determining
11 how to do so, whether it's written submissions, what
12 the timing for them is, whether there is argument and
13 things of that nature, we've got some cites for you.

14 One of them one is the Vioxx cite from the
15 Fifth Circuit. We have some other cites. One of them
16 you might like because while it's older, Net2Phone,
17 Inc. v. eBay, Inc., 2008 U.S. Dist. Lexis decision
18 50451, it was by a Magistrate Judge, but that
19 Magistrate Judge was Judge Schwartz who now sits in
20 the Third Circuit.

21 I figured you might like to know that was one
22 of her decisions, finding that the Special Master's
23 rulings, for instance, on procedural matters involve
24 deadlines, for example, for the presentation of
25 submissions and evidence. Otherwise, if you found

1 that these were procedural, it swallows what a Special
2 Master does because what a Special Master does is rule
3 on discovery issues.

4 So it's going to be a de novo standard. I
5 want to make that clear today. There are some other
6 cases I could cite to you. I have a number of others.
7 So that also going forward we know where we are, and
8 essentially everything is de novo unless it is a very
9 limited category, as I said. For instance, if you
10 said, No, you got to have something to me by tomorrow,
11 and you want to appeal that, that's an abuse of
12 discretion standard.

13 So with that let me proceed to where we are.

14 As I really see this, what we are breaking
15 this down into is, there were four categories that
16 were identified before Judge Pisano, and I've read the
17 transcript of the hearing before him and it was quite
18 clear. He asked, What are the areas, and plaintiffs
19 identified four. I don't think you can dispute that,
20 except that now where you are is that you think you
21 have identified more that you require.

22 That's fair, right, that that is your
23 position?

24 MS. PARFITT: That's correct.

25 MR. LAPINSKI: Yes, your Honor. Our position

1 is that we have identified more and our position would
2 also be that we were giving examples as to some of the
3 important areas and that's what Ms. O'Dell had
4 presented to Judge Pisano.

5 JUDGE WOLFSON: I don't think it was so
6 limited, but that's fine. I think he made it pretty
7 clear. I don't think it was that limited. But I
8 don't take to heart the defendants' position that
9 because you said those things on the record there now
10 you are barred from identifying anything else. That
11 would be an exercise in folly to make that
12 determination and that should be barred at this point.

13 So instead what I want to do is, I want to
14 consider what are the areas that you are now
15 identifying for which you think you should be entitled
16 to take depositions prior to there being experts,
17 general causation experts.

18 I know that briefly the defendants in their
19 papers addressed as well why they thought these would
20 not be relevant topics regardless for purposes of
21 general causation, and that's what I am going to
22 address because at this point I don't find that Judge
23 Pisano even though I am considering it de novo anyway,
24 certainly I understand his ruling.

25 I already made a finding that I agree that

1 30(b)(6) depositions in these areas were appropriate,
2 and he couldn't even consider these new areas because
3 they weren't before him. So I'm willing to do it
4 today. I'm not sending it back to him to do. I don't
5 want to waste our time. Let's move.

6 Now, you've read the defense papers as to why
7 they claim those -- I think it's essentially three
8 areas that you have identified why you believe they
9 are relevant. Defendants think they are not. Let me
10 hear from the plaintiffs.

11 MS. PARFITT: Your Honor, you are correct with
12 regard to Ms. O'Dell's representation that day with
13 Judge Pisano. It was by way of example. I'm glad
14 that your Honor has read that transcript and
15 understands that to be the case.

16 The other areas, and I think you are also
17 correct, I think as we move through this process, I
18 think we realize that it's very difficult to make
19 inquiry and be self-limiting. So we are trying to
20 stay within the confines that the Court has asked us
21 to be, but also do it in a way that's actually
22 realistic.

23 So one of the areas was the biological
24 plausibility of talc migrating to the ovaries which is
25 clearly a mechanistic aspect of the science. It goes

1 to the heart of the science. Your Honor, during the
2 science day, that was clearly something we were trying
3 to preview for the Court that there was indeed an
4 abundance of science there dealing with the issue of
5 biological plausibility.

6 What we are hoping to get from the defendants
7 in the course of these depositions is information
8 regarding the defendants' recognition, their own
9 research, their own articles that talk about the issue
10 of biological plausibility that indeed talc can
11 migrate through and up the hemo tract reaching the
12 ovaries.

13 JUDGE WOLFSON: Let me ask you this,
14 Ms. Parfitt: In talking about that, would it have not
15 been part of the document production that any of those
16 studies, I think what you called it as their own
17 research or articles about it, were there such things
18 as part of the document production?

19 MS. PARFITT: There are some in the documents.
20 There are some representations in the documents. But
21 what's interesting is in some of those documents it's
22 a debated issue. So obviously the inquiry would be:
23 Why would defendants make that statement that it is
24 biologically plausible? Then maybe in that same
25 document there may be the discussion about, Well, it

1 really can't. Or, Let's do a study that shows that's
2 really not biologically plausible.

3 So we're just trying to get at the meat of it.
4 As your Honor has indicated, you need to know: Do
5 talcum powder products cause ovarian cancer. So we
6 need to make a little further inquiry. It's not just
7 through the documents because the documents aren't
8 clear.

9 And if we were just to introduce the document
10 to the jury at some point in time -- what I'm
11 suggesting to the Court is that might not be the best
12 evidence and what we are trying to obtain is the best
13 evidence on these topics and some of that can be
14 cleared up. I might add sometimes we protest too
15 much. We may make inquiry on a topic and wish we had
16 stayed with the document and we realize that. I think
17 that's always that tension: How much of an inquiry do
18 I make versus how do I make it clear?

19 So that when we are called upon by the Court
20 to give a reasoned explanation and our experts are
21 called upon by the Court to give a reasoned opinion,
22 they have the material that they need and it is clear.
23 That was why that seemed to be a pretty obvious topic
24 and one that's very, very pertinent to the science.

25 THE COURT: Give me what you claim the topic

1 to be.

2 MS. PARFITT: The topic would be: Is there
3 scientific evidence of the biological plausibility of
4 talcum powder products migrating to the ovaries and
5 causing ovarian cancer?

6 We would submit that there are clearly defense
7 documents that say that, but there are also defense
8 documents that dispute that. There are also defense
9 documents and information in the record that suggest:
10 How do we attack that? And that goes more or less to
11 the bias and influence. What group should we use
12 perhaps or scientific body to perhaps attack that
13 theory? Say it ain't so.

14 That's where we are going. That was why that
15 seemed to be a very reasonable topic that went to the
16 heart of I think the Court's inquiry in the very
17 beginning and what the experts are going to be asked
18 to present on. So that was one topic.

19 JUDGE WOLFSON: Let's take them one at a time.
20 Let's stop. I'm going to turn to the defendant.

21 Ms. Sharko.

22 MS. SHARKO: So Ms. Parfitt kind of made my
23 argument for me when she says, We want to show this to
24 the jury; or, We want to argue to the jury; or, We
25 want to know what the defendant meant in whatever this

1 document --

2 JUDGE WOLFSON: I noticed that and I'm going
3 to disregard that because I know when you said that,
4 that is not what we are talking about. We are talking
5 about getting the experts ready.

6 MS. PARFITT: That's correct, your Honor.

7 JUDGE WOLFSON: Maybe I should go back to
8 Ms. Parfitt and say: Why do you think your experts
9 require that?

10 Have a seat, Ms. Sharko.

11 MS. PARFITT: I think it's important that our
12 experts not only are versed in what the scientific
13 literature is because the scientific literature is
14 based upon studies that could have been influenced or
15 even written by the defendants, and the experts are
16 asked to look at the body of literature, the totality
17 of the literature and science and weigh in as to
18 whether or not there is a causation theory to be
19 proven.

20 It's important to open the door, get behind
21 the door, get behind the curtain and see: How was
22 that science constructed? Is it pure? Has it been
23 influenced? Has it been impacted? We know that there
24 are white papers that have been previewed by law
25 firms. We know that there are white papers by the

1 defense where the defense had -- rather, the
2 defendants have reached out to have others review the
3 material, give comment, and then eventually a
4 scientific article is then put out there into the
5 universe of medical information.

6 JUDGE WOLFSON: Have you received any
7 communications from people at J&J to any of the
8 authors of the literature that has been out there?

9 MS. PARFITT: Yes, we have.

10 If I understand the Court's question: Have we
11 received some documents that suggest the defendants
12 have asked other people to give input as to the
13 science? Yes.

14 JUDGE WOLFSON: Okay.

15 MS. PARFITT: I think we need to investigate
16 that. We need to ask those questions about: Why was
17 that done? How was it done? What did it look like
18 before you made comment? What would that article have
19 looked like originally? What does that article look
20 like now? I think that's one example, your Honor.

21 JUDGE WOLFSON: Okay.

22 MS. PARFITT: Your Honor, we are prepared
23 today. I didn't know if this would come up. We are
24 prepared to present to the Court a couple of examples
25 of that wherein we have a scientific paper that has

1 been previewed and edited by people outside of the
2 scientific community, a law firm, and then there is
3 eventually a peer-reviewed article that has been
4 published in the peer-reviewed literature.

5 So there are instances like that that cause us
6 to pause and say: What is the scientific literature
7 on talcum powder products and ovarian cancer? Because
8 our experts are going to be asked to rely upon that as
9 part of their presentation to the Court. They need to
10 weigh it all and they need to weigh most particularly
11 the purity of the science they are looking at.

12 Just as you are looking at the methodology of
13 the experts, the experts when they were reviewing the
14 scientific literature are called upon to look at the
15 purity of the papers that they were reading, look at
16 that which perhaps weighs in the favor of causation
17 and to look at science that says it doesn't. And the
18 science that says there is no causative link, I think
19 it important that they have the history of that
20 scientific evolution.

21 JUDGE WOLFSON: Ms. Sharko.

22 MS. SHARKO: So the literature is out there.
23 It wasn't contaminated by our client.

24 JUDGE WOLFSON: Well, that's your statement,
25 Ms. Sharko. I don't have to accept that.

1 MS. SHARKO: Much of this was in fact written
2 by plaintiffs' experts. So one of the topics that
3 Judge Pisano ordered is -- quote, unquote-- bias and
4 influence, and that would seem to encompass the
5 potentially relevant issues raised by the plaintiffs.

6 JUDGE WOLFSON: It might and I guess that's
7 some of of what you are fleshing out. That's largely
8 what Ms. Parfitt just explained as to why she needs
9 it. I think she went a little bit beyond that. But I
10 do think it is encompassed by the bias because that is
11 one of the categories, and you are going to be arguing
12 about: What does that mean in your 30(b)(6) notice?

13 I think one of the other things that she
14 referenced as well is that if there were by any chance
15 any internal analysis, you would think it would have
16 been produced in documents, but maybe it didn't make
17 its way to documents. That's some of the concern
18 here, which is: What if there were some internal
19 analysis that was done or something else or oral
20 communications with those that are not going to appear
21 in a document?

22 MS. SHARKO: The topic that was stated that's
23 in dispute is defendants' bases for statements about
24 the biological plausibility of talc migrating to the
25 ovaries. That's a scientific question that the

1 experts will have to address based on their knowledge,
2 training and experience, and the scientific
3 literature, not based on internal emails.

4 JUDGE WOLFSON: Not emails because you've
5 already got the documents. She's got them assuming
6 you've produced everything that there is.

7 What she is suggesting instead is that there
8 could have been background discussions about what
9 found its way in that could have been about some other
10 things being done in the company that don't make its
11 way into documents and wants to know if that exists.
12 It may not. That's all they want is somebody who
13 could talk about: Is there more out there that is not
14 in the documents on this topic?

15 MS. SHARKO: So beyond what falls under bias
16 and influence because I get that and they sent us a
17 more detailed statement of the topics and we'll get
18 back to them and I would hope that will resolve that.
19 If the question is: What else is there out there?
20 What were people talking about in the company? A, I
21 don't think that's relevant to the general causation
22 issues for the reasons I just argued, but --

23 JUDGE WOLFSON: Not so much: What are they
24 talking about? But the question is: Was there
25 anything else being done in the company? Because I've

1 had this discussion before. What somebody may think
2 in the company doesn't influence me. Does the science
3 support it? It's going to be true for your expert,
4 their expert, their company people, not what their
5 beliefs there because that is not where we are. This
6 isn't about fraud. This isn't about
7 misrepresentation. This isn't about hiding at this
8 point.

9 What I am concerned about and the only thing I
10 want to make sure that we have discovered out there
11 and that they are entitled to is if there is other --
12 I don't want to say material because hopefully if
13 there were documents, you would have produced them
14 all.

15 But someone with knowledge about whether in
16 fact perhaps there was some internal testing being
17 done or that they had someone else do on the outside
18 on the third party that never makes its way to a
19 document in the end so it doesn't get produced, but
20 there could have been something that goes to the
21 science, that is the kind of thing that I think is
22 still open that they could get.

23 Now, that's fairly limited though because I
24 don't even know if it exists. But I think they would
25 be entitled to that because that could go to the

1 science, whether in fact there were things being done
2 or studies being done outside that never make its way
3 to a full blown study and do not end up in documents,
4 but that may have revealed some information that
5 someone learned about the science, the science.

6 MS. SHARKO: So what testing was done I
7 believe falls within one of Judge Pisano's categories
8 and they now have a subcategory on that in their
9 30(b)(6) notice and I understand that topic. I'm not
10 disputing that topic.

11 THE COURT: Okay.

12 MS. SHARKO: What concerns me and it sounds
13 like maybe this is not implied is: What over the
14 years did people think about or wonder whether it
15 should be done or it shouldn't be done?

16 I don't know how you have a 30(b)(6)
17 deposition on what people thought about for the last
18 however many years, 40 years, 30 years, but what
19 testing that was done. Yes, I think that's within
20 that, within the notices. Was there -- quote, unquote
21 -- bias or influence? Did people look at drafts? Did
22 people fund studies? Yes, that's within the
23 categories that --

24 JUDGE WOLFSON: Did people have discussions on
25 the phone with others? Discussions are important.

1 That's not going to show up in the documents.

2 So on the bias aspect, I'm not writing your
3 30(b)(6) notice here. But it would include
4 communications. They don't show up in a document. I
5 don't quite know how you are going to go about doing
6 that and finding out everyone who may have had a
7 discussion with someone who was doing a study, someone
8 who was writing a paper, but that would be part of it
9 and I certainly want that included.

10 MS. SHARKO: How do you find that out, though?

11 JUDGE WOLFSON: That's the problem. That's
12 why they wanted to identify 60 witnesses that I'm not
13 allowing. But that's where you are going to have to
14 go back and talk to people who were involved in some
15 way with these studies and whether there were
16 communications with the writers and the authors of the
17 papers and the ones conducting the study,
18 communications that don't appear in writing.

19 MS. SHARKO: So what I would ask then is we
20 have the 30(b)(6) notice and we were about to serve
21 our response to it. To the extent it needs to be
22 amended or clarified or plaintiffs think they need
23 another topic, if they can then add that in. Because
24 to me what your Honor just said is materially
25 different from the topic we started discussing which

1 is defendants' statements about the biological
2 plausibility of migration or something like that.

3 JUDGE WOLFSON: That was the topic right now.
4 But when we were talking also about bias and other
5 things, it all falls within there.

6 What I'm trying to say is, why this is a
7 little bit broader than you think it. The documents
8 alone don't do it. There is an obligation to see if
9 there were communications. It does go to bias perhaps
10 and it also could reveal if someone was aware of
11 something else in the science that doesn't make its
12 way to a document.

13 Now, I've said many times, I'm not concerned
14 about people's opinions on these things. Every expert
15 is going to have to come up with their own view based
16 on what existed. But if there were other things in
17 the science that are not appearing in the documents,
18 we want to know.

19 MS. SHARKO: So I would suggest that
20 Ms. Parfitt and her team write that out so we have a
21 clear statement. As your Honor said at the last
22 conference, you were right, I think that notice is
23 helpful and then we can go from there.

24 JUDGE WOLFSON: I don't know if it's a really
25 new topic. It may be encompassed in the others, but

1 we are not fleshing out what it's going to look like
2 and you describing what you're looking for.

3 MS. PARFITT: I think, your Honor, you have
4 actually done a very articulate job with that and I
5 appreciate that and that is indeed what we're trying
6 to convey.

7 MR. LOCKE: Your Honor, could I just ask a
8 clarification?

9 JUDGE WOLFSON: Sure.

10 MR. LOCKE: Tom Locke for PCPC.

11 We're not talking about the motive that a
12 defendant may have had. Is that correct?

13 JUDGE WOLFSON: I'm not talking about motive
14 today.

15 MR. LOCKE: So the depositions won't include
16 motive. It won't be about sort of intent. It's about
17 what communications defendants had with scientists who
18 wrote papers or articulated views on the science.

19 MS. PARFITT: I think it's a little bit
20 broader, Tom, than what you have said, but I think
21 it's in line with what the Court has said.

22 JUDGE WOLFSON: Why don't you repeat what you
23 think that is so we don't have any misunderstanding
24 when we leave.

25 MS. PARFITT: Sure. What we are talking

1 about, and I think probably the best example of what
2 we are trying to get at, is something that we believe
3 actually exists. The Court has identified it. There
4 are inquiries that we need to make of their people
5 with regard to, by way of example, why a peer-reviewed
6 article is published and why it says what it says by a
7 particular author.

8 We know, by way of example, we know in one
9 instance a peer-reviewed article that is out there
10 that was sponsored by a law firm years back has
11 multiple drafts where that peer-reviewed article is
12 edited, is commented by on scientific issues.

13 So we need to ask the questions because it's
14 not real clear that pathway leading to a published
15 article and in sections when we reach out to a law
16 firm, we need to do the archeology there and those
17 kinds of communications may or may not be on paper.

18 JUDGE WOLFSON: I understand. That's what I
19 was including.

20 MS. PARFITT: And I understand the Court has
21 made it very clear about what we are allowed to
22 discovery. We'll get a chance to talk about the fraud
23 and the motive. The Court is asking to look at the
24 science. Why is it that the defendants and the
25 parties, the plaintiffs, are presenting the evidence

1 two different ways? They say no causation. We say
2 causation.

3 Our experts are going to be called to come
4 before the Court and give their opinions on that and
5 they need to have a basis, not a basis based upon junk
6 science, but a basis of their opinions based upon
7 sound reliable scientific theories. We need to flesh
8 that out just as their experts will. I think what the
9 Court has previously stated is very clear to us
10 that --

11 JUDGE WOLFSON: What I really need to know is:
12 What is your concern? What do you want to make sure
13 is not part of this?

14 MR. LOCKE: Well, I think it goes to what your
15 Honor was saying about opinions of individual
16 witnesses on what their views may or may not have
17 been, or what a defendant's views may have been about
18 the science. We're not really going to that. The
19 question is: What actions did a defendant take to
20 change the science?

21 JUDGE WOLFSON: Or if they were in receipt of
22 any science that is not disclosed in documents, if
23 they were made aware of something.

24 For instance, one of your people gets a call
25 from someone who is in, let's say, the midst of

1 writing a paper, doing a study, and says, Look, I
2 found this and I think there is a connection here, and
3 they have that discussion and then something else
4 happens.

5 MR. LOCKE: Your Honor, I still view that as
6 an act or an omission, if you will.

7 JUDGE WOLFSON: Good. Then you're good. So
8 that's all fine.

9 Yes, Ms. Sharko.

10 MS. SHARKO: One request that I think would
11 streamline this. Ms. Parfitt has referred to
12 documents. They are obviously relying on documents
13 for this. If we could have those documents, that
14 would really help us identify the issues and the
15 witnesses and make sure that they are fully prepared.

16 JUDGE WOLFSON: She doesn't want to limit it
17 to that, though. Those are the ones she knows about.
18 There could be others.

19 MS. SHARKO: I appreciate that.

20 JUDGE WOLFSON: That's a starting point for
21 you is what you are saying.

22 MS. SHARKO: But the documents they have that
23 they are probably going to use in the deposition, why
24 can't we have those now?

25 MS. PARFITT: Your Honor, if I can respond to

1 that. I don't think it's the civil procedure that I
2 preview my arguments in advance of a deposition. I am
3 representing to the Court, and we will stand by that,
4 that we understand the breadth of what we're allowed
5 to make an inquiry. But to have to preview documents
6 before a deposition, Ms. Sharko wants to be able to
7 then prepare their witnesses. That's not how
8 depositions go.

9 MR. LOCKE: Your Honor, let me just address
10 that. They are asking people at our clients who don't
11 have firsthand knowledge of these events, many of
12 which took place 40 or 50 years ago, and we're
13 supposed to educate them. There are -- I don't
14 know -- two million documents out there. How do we
15 know what we need to educate our clients on if we
16 don't have the documents?

17 The topics are very broad and you could hear
18 in this discourse the breadth of what we need to
19 educate our clients on. We need to have some sense so
20 that we can say: Okay. There is not going to be a
21 surprise to a corporate representative and we're
22 binding our client to a position on a document that
23 they haven't seen before.

24 MS. SHARKO: There is also plenty of precedent
25 for providing in advance of a deposition the exhibits

1 that you in good faith intend to use, and indeed
2 that's one of the issues that Mr. Lapinski and I are
3 presently discussing in the negotiation about the
4 deposition protocol.

5 JUDGE WOLFSON: We had a little bit of this
6 discussion the last time because we talked about
7 identifying the documents and we talked about whether
8 it's a week in advance or something like that. We had
9 some discussion about it. I don't know where we ended
10 up with it.

11 MS. PARFITT: Your Honor, where we ended up
12 is, we did not settle that discussion. There have
13 been discussions between Mr. Lapinski and Ms. Sharko
14 with regard to that. The plaintiffs' position is that
15 there is precedent as well that we do not have to do
16 that.

17 JUDGE WOLFSON: I guess if there is this issue
18 remaining about previewing the documents and you can't
19 resolve it, present it to Judge Pisano.

20 MS. PARFITT: Your Honor, with regard to Mr.
21 Locke's position, the truth of the matter is and I
22 find it interesting, yes, millions of documents have
23 been presented from their files. That's why the Court
24 has narrowed it down. You told us, follow 30(b)(6)
25 depositions, present different topics, and the

1 defendants will then present people who could address
2 these topics.

3 So I don't think there is a grand surprise and
4 that's generally how a 30(b)(6) situation works, that
5 you identify a schedule of items that you wish someone
6 to speak about on behalf of the corporation and they
7 do. And as your Honor indicated in the last status
8 conference, if that one individual is not capable, not
9 because they are not competent but just not in their
10 wheelhouse, produce someone else.

11 So I don't think there is an element of
12 surprise. And to be put in a position that we provide
13 the defendants with all the documents that we might
14 show during a deposition, again, as your Honor has
15 indicated, there is a dispute between the parties as
16 to whether or not we should have to do that and that's
17 something if we can't resolve it, as you indicated,
18 we'll take it before Judge Pisano.

19 MS. SHARKO: So there is really three issues
20 here. The issue that we discussed in some detail at
21 the last conference was whether the plaintiff could
22 have the documents that the witnesses reviewed to
23 prepare for the deposition. That's one issue. You
24 told us to resolve it or go to Judge Pisano, and we'll
25 do one or the other.

1 JUDGE WOLFSON: But I said you can't have that
2 general question. That is a work product question.

3 MS. SHARKO: Right.

4 JUDGE WOLFSON: I had already decided that.
5 That's general law. You can ask a witness: Did you
6 review this document? That's not your work product,
7 because that's from using their own abilities to think
8 that was a document that was relevant and they should
9 have reviewed.

10 Let Ms. Sharko finish.

11 MR. LAPINSKI: That's fine.

12 JUDGE WOLFSON: So have a seat. When she's
13 done, you'll get your turn.

14 MS. SHARKO: The second bucket of issues is
15 whether we get the exhibits, all of the exhibits in
16 advance, and I appreciate that you said we should
17 resolve that or take it Judge Pisano, and we will.

18 The third issue is: Ms. Parfitt is
19 representing that there are certain documents that
20 relate to the topic she is asking your Honor to add to
21 the notice. My request is: May we have those
22 documents? If Ms. Parfitt were filing a motion, she
23 would attach those as exhibits.

24 JUDGE WOLFSON: I think it would be helpful.
25 You have already indicated there are a couple of

1 documents that you have, and frankly to make sure we
2 have somebody who is going to talk about that, and a
3 couple have been identified in the briefing you gave
4 me already. It's not going to limit you from my
5 perspective.

6 But if there are ones that you know that are
7 going to the subject and you want to make sure you
8 have someone who is going to be able to discuss that
9 document and what's behind it -- I know you have
10 identified, for instance, these surveillance documents
11 that talk about the criteria and things. Let's do it.
12 It's not a secret. Let's make sure that they know and
13 they have somebody there to do it.

14 MS. PARFITT: Your Honor, I just want to make
15 sure I'm not in the position where if I give generally
16 a representative document that I'm not going to be
17 able to at the time of the deposition to bring out my
18 cache of whatever it is I need to ask that person.
19 Again, these depositions aren't a preview of the
20 strategy of the plaintiffs.

21 I understand what the Court is saying. I will
22 tell you this: The deposition notices that we sent
23 for the 30(b)(6)s, I don't think we provided those to
24 you. We can today. They are very specific.

25 JUDGE WOLFSON: Okay.

1 MS. PARFITT: We can provide that to you and
2 I'll pass that to the Court at the appropriate time.
3 They are very specific. And what we can do is, if
4 there is a represented document we want to make sure
5 that someone can speak to it, I think it behooves us
6 to make it very clear and I think we can do that and
7 I --

8 JUDGE WOLFSON: That's what I'm suggesting.
9 It could be that document.

10 MS. PARFITT: I just don't want to be limited.

11 JUDGE WOLFSON: I think I said I'm not going
12 to limit you. But I want in advance if you know that
13 there are a critical few -- I didn't say I'm limiting.

14 What I said is, if you know there are a
15 critical few that you are definitely going to want to
16 discuss and that stemming from that there could be
17 others, they'll know that if you are talking about
18 those, they have to know about the others that come
19 around it, that's fine.

20 You are not going to identify chapter and
21 verse with every document in your notice, but I think
22 it would be helpful if there are a few critical ones.
23 It's not going to really be a surprise to anyone.

24 Let's put them in. I think that would be
25 helpful.

1 You had something, Mr. Locke?

2 MR. LOCKE: No, your Honor. Thank you.

3 JUDGE WOLFSON: Mr. Lapinski,.

4 MR. LAPINSKI: I did, your Honor. Thank you
5 very much.

6 Going back to the first point that was raised
7 by Ms. Sharko in regard to production by defendants of
8 documents relied upon by the their 30(b)(6) witnesses
9 in order to prepare, we think that there is case law
10 that establishes that we would have a right to be able
11 to see those documents and at minimum we would like to
12 be able to present the issue to Judge Pisano and if
13 necessary brief the issue.

14 JUDGE WOLFSON: You could present it. It's
15 been many years since I've had to do these issues, but
16 that was always my recollection. You can't make a
17 general request for: Let me see everything that you
18 were shown to prepare for your deposition. You can't
19 make that request.

20 MR. LAPINSKI: We think there is an exception
21 as it relates to 30(b)(6) witnesses and we would just
22 like the opportunity to be heard either before your
23 Honor or Judge Pisano.

24 JUDGE WOLFSON: My view always was that, no,
25 it's supposed to be using your abilities and acumen

1 because if you think that they are not adequately
2 answered, you can say: Did you review this document
3 in preparing your testimony?

4 You're allowed to ask that and you're allowed
5 to cull out and pick out the ones that you want to ask
6 them about if they reviewed, but you can't have a
7 blanket request. Maybe the law has changed since I
8 did this years ago, but that was the way I always
9 understood the work product. It was your obligation
10 and you're free to ask them.

11 That does not impinge on work product if you
12 ask them: Did you review this document in preparing
13 your testimony today? You are picking out the
14 document and that's why it's been your work product
15 and you're allowed to do that.

16 I don't think you disagree with that, Ms.
17 Sharko.

18 MS. SHARKO: We do agree.

19 JUDGE WOLFSON: Okay. Thank you.

20 MS. PARFITT: Your Honor, if I can approach.

21 JUDGE WOLFSON: I don't know if I need more.

22 MS. PARFITT: These are the 30(b)(6)s. We can
23 give them to you at the end.

24 JUDGE WOLFSON: Fine.

25 I think we fleshed out where we are and I've

1 asked if you can identify some of the critical
2 documents as part of your notice because it would also
3 then give them the general area and they will know
4 that they better prepare someone on anything that
5 surrounds that document.

6 MS. PARFITT: Again, my only pause is to make
7 sure that we are not in the middle of the deposition
8 and the written word wasn't there and they say: You
9 didn't put it down there specifically in those words.

10 JUDGE WOLFSON: I said you are not limited.
11 You are protected.

12 What's the next one?

13 MS. PARFITT: The next area is information
14 relied upon by defendants to support their position
15 that talc products do not cause ovarian cancer.

16 Again, going specifically to the science, what
17 we understand from some written communications, but
18 again we don't have the oral communications, and again
19 this is just by way of example. I'm not limiting my
20 inquiry to this.

21 By way of example we know that certain science
22 was introduced to the NTP, the National Toxicology
23 Program, when they were trying to make a decision --
24 when they were making a decision whether or not to
25 classify talc as a carcinogen, clearly a scientific

1 issue.

2 And what we would like to learn about that
3 are, again, these communications between the
4 defendants and perhaps the NTP, or name another
5 regulatory body, where they were providing certain
6 scientific positions that perhaps, again, when we pull
7 back the curtain those scientific positions perhaps
8 their origin had some background that would be very
9 relevant to the science.

10 For instance, what was given to the National
11 Toxicology Program about the science of talc and
12 ovarian cancer? We would like to know that. And what
13 role did the defendants have in the development of
14 that compendium of science that might have been
15 presented or used in order to impact perhaps a
16 decision that the NTP made?

17 That's just by way of reference. We could use
18 IARC as well. Again, there are documents and there
19 are communications and there are knowledge, again,
20 about the science that led to organizations making
21 decisions. And then today the defendants stand before
22 the Court and say: Talcum powder products can't cause
23 ovarian cancer. And our support for that is the fact
24 that the NTP by way of example has never classified
25 talc as a carcinogen.

1 Well, there is an inquiry, a very important
2 scientific inquiry to be made. The defendants may
3 take the position that IARC in 2006 only said it was a
4 possible carcinogen based upon the science that was
5 submitted either by defendants. Some of these
6 articles that we're talking about that were relevant
7 to the first issue about the biological plausibility
8 might have made their way into the IARC arena and may
9 have made a determination with regard to how IARC
10 felt.

11 So now you have large governmental and
12 regulatory bodies including the FDA who are making
13 scientific decisions based upon science. Some of that
14 science we would like to get behind, again, the
15 curtain. It's the science that was presented. There
16 are lots of questions.

17 I think your Honor hit on it. We can look at
18 documents and we can infer and some of the documents
19 we may inquire about. Again, be careful what you ask
20 for. Be careful what question you ask. There may be
21 great clarity given to them that really do not favor
22 the plaintiffs' position. That's a strategic position
23 we are taking and risk.

24 There are also communications that we may
25 learn. People, maybe we don't know all the people

1 that had something to do with the science that then
2 was used as a basis for an opinion by a regulatory
3 body.

4 That's important to know because our experts
5 too are looking at what NTP did, what a regulatory
6 body did. What's the body of evidence that they were
7 looking at? Who played a role in generating that body
8 of evidence? What were the communications? Were
9 there communications between a J&J person or an Imerys
10 person or whomever or even PCPC that might have had
11 some bearing?

12 Again, this is strategic. Again, we could ask
13 that one question too many and we realize that. It's
14 important to the science because, again, these experts
15 are going to be called upon, you are going to ask
16 them: What's your basis for that? You might even say
17 the NTP didn't find that. What were you relying on?
18 What kind of science were you looking at? So I think
19 it's important we make some inquiry.

20 Again, those are examples and I even hesitate
21 to give examples because it really goes more to what
22 your Honor was saying earlier, the kinds of
23 communications and learning a little bit more about
24 these scientific issues. It's broadening I think our
25 request a bit on science issues. But I think we've

1 heard the Court any number of times indicate: This is
2 about the science. You will have your chance to do
3 other things. And these are scientific inquiries.

4 The truth of the matter is, your Honor, if we
5 get into these depositions and we are stepping out of
6 our lane, I am quite sure, I've got very able counsel
7 on the other side, they will certainly reach out if
8 we're doing that. But I think we understand the world
9 we're in and I think we have done everything we can to
10 try to stay in our lane. But I think these are
11 important issues that need to be investigated.

12 And when we talk to Judge Pisano about it, if
13 we didn't make that clear we should have. We just
14 don't want to be constrained. We have an opportunity
15 before these expert reports are prepared to get
16 relevant information to our experts and some of that
17 would be coming from some of these science depositions
18 that are taken.

19 MS. SHARKO: So I'm not sure why we are here
20 or what Ms. Parfitt is doing.

21 JUDGE WOLFSON: Because I told you to come in
22 today.

23 MS. SHARKO: Because when you look at -- first
24 of all, Judge Pisano ruled that a topic was issues
25 related to alleged influence and bias, No. 1.

1 No. 2, in the 30(b)(6) notice they sent to us,
2 in paragraph Roman numeral IV, subpart three --

3 JUDGE WOLFSON: Why don't you hand one up to
4 me.

5 MS. SHARKO: -- is the NTP, and there are five
6 different subparts about communications with the NTP.

7 So everything Ms. Parfitt just said in that
8 last speech about how she needs this is in this notice
9 already. And when she gets our objections, when
10 Ms. Parfitt gets our objections, I don't think we're
11 going to object to that because I guess that
12 communications with the NTP, in paragraph 4 with IARC,
13 in paragraph 5 with FDA, in paragraph 6 with the NCI,
14 et cetera, I guess that those are topics that they are
15 allowed to have a 30(b)(6) on.

16 That's totally different from what was in this
17 brief, which is, they want to add, "information relied
18 on by defendants to support their position that talc
19 products do not cause ovarian cancer." I submit that
20 topic is not appropriate and I'm prepared to argue
21 why.

22 But if what the plaintiffs mean by that topic
23 is communications with the NTP, the NCI, IARC,
24 et cetera, as listed in this deposition notice for the
25 most part other than one subparagraph, I don't think

1 we're going to object to that. I guess that's what
2 Judge Pisano ruled.

3 JUDGE WOLFSON: As I understand your position,
4 Ms. Sharko, what you are saying is, as we have been
5 having this discussion here in court today, there are
6 things that Ms. Parfitt is bringing up that you see as
7 really encompassed in the end by the topics that have
8 already been identified and it's more fleshing out
9 more specifically in the 30(b)(6) notice those areas.

10 MS. SHARKO: Yes.

11 JUDGE WOLFSON: So far it has really sounded
12 that way because when we first did the first one, we
13 said it went to bias and influence. It also went to
14 what science might be out there that hasn't been
15 disclosed in the documents.

16 I'm hearing the same here, too. I think it is
17 falling within these categories. And it's more if
18 you're looking for guidance from me as to what falls
19 within those categories, but I think that is still
20 part of your negotiation.

21 You had something, Mr. Locke?

22 MR. LOCKE: Yes, your Honor, two points:

23 First, what plaintiff said about the
24 communications with scientific entities, that's fine.

25 JUDGE WOLFSON: Okay.

1 MR. LOCKE: However, what initially was said,
2 information relied upon by defendants that talc
3 doesn't cause ovarian cancer, essentially they want to
4 be able to ask a witness to say: Here is what NTP
5 said. Why do you agree or disagree with what NTP
6 said? Here is what IARC said. Why do you agree or
7 disagree with what IARC said?

8 That's not something their experts need
9 informing their opinion. They don't need our
10 opinions. And that's what it's getting to where they
11 are going to be saying: Tell us why you agree or
12 disagree with this article.

13 JUDGE WOLFSON: I don't think that's it. And
14 you've already said thank you, both sides have said
15 you don't have any issue with communications because
16 obviously it could go to bias and influence and it
17 goes to there.

18 The issue of your opinions is really not what
19 I see as should be asked. It's whether there is
20 science that you had in your possession. Presumably,
21 it's in the documents already. And if not, if there
22 were communications or other studies that you had that
23 shows that talc does not cause cancer or whatever,
24 those are the kinds of things, not why did you form
25 your opinion.

1 MR. LOCKE: Thank you, your Honor.

2 MS. PARFITT: Your Honor, it could go either
3 way. It could go either way that talc in their
4 possession they may have science that says talc can
5 cause ovarian cancer or they could have in their
6 position a science that says talcum powder cannot
7 cause cancer.

8 JUDGE WOLFSON: You can ask about the science,
9 and I don't think there is going to be an objection to
10 ask about the science.

11 Right?

12 MS. SHARKO: No, not as listed in Section
13 Roman numeral IV, one through seven or so.

14 JUDGE WOLFSON: Okay.

15 MS. SHARKO: My suggestion is, they sent us
16 this detailed notice. We are on the verge of sending
17 a response. What seems to me to be the most orderly
18 way to proceed is, if plaintiffs now feel they have to
19 amend this notice to redline it, send it to us, we'll
20 fix our responses, and if we can't agree we'll go to
21 Judge Pisano. That is what we were told by your Honor
22 the last time to do.

23 THE COURT: All right.

24 MS. PARFITT: Your Honor, the reason I
25 continued to be I guess more verbose than I needed to

1 be is because I was actually reading from defendants'
2 objections as to what they said we wanted that we
3 didn't want before. So I think we have a clearer
4 understanding.

5 THE COURT: All right. If I can make another
6 suggestion.

7 I know what you are saying, Ms. Sharko, is you
8 are going to send a written response. All well and
9 good. I must tell you, I think the kind of dialogue
10 we have is more effective than these written
11 responses. Everyone sort of gets stuck on what a word
12 means, et cetera, and you go back.

13 I think if you talk it out, as we have just in
14 fact done here today, it's much more helpful
15 because as we've had this dialogue everybody figures
16 out a little bit more of what everyone is looking to
17 do.

18 So my suggestion is, first of all, you can go
19 back. I think it's a good suggestion by Ms. Sharko
20 that if you want to refine your 30(b)(6) notice in
21 light of what we have been discussing because it's
22 really not new categories. It's just within the broad
23 categories we have that Judge Pisano defined the
24 different things that you are looking for more
25 specifically.

1 I think you might want to do that first and
2 then my suggestion is you have a discussion of what
3 that means, and then you can come back and indicate
4 which ones you object to after that discussion rather
5 than first doing it in writing and then having a
6 discussion. Okay?

7 MS. SHARKO: Sure. That's fine. I
8 anticipated discussion after the response, but we can
9 have it before.

10 JUDGE WOLFSON: I think it will help. It will
11 save a little bit of time and limit it maybe a little
12 bit more.

13 MS. PARFITT: Your Honor, if I've left
14 something out, I don't want to be remiss, Mr.
15 Lapinski is --

16 JUDGE WOLFSON: Go ahead, Mr. Lapinski.

17 MS. PARFITT: Thank you, your Honor.

18 MR. LAPINSKI: My only comment would be that
19 if defendants were on the verge of sending us their
20 redlines as to what we have already done, the simplest
21 thing may be to get their redlines. We can make
22 edits, incorporating what was discussed today, and
23 send it back to them. That seems to be the most
24 productive way to do things.

25 JUDGE WOLFSON: I don't care. You people do

1 it in whatever way you think is most expeditious to
2 move this along. I won't suggest that my method is
3 any better than yours.

4 So that's dealt with going forward on your
5 depositions.

6 No, Ms. Sharko, you are not getting a date for
7 the Daubert hearing today, just to make the record
8 clear and have us be consistent.

9 The rest of this frankly for me is more
10 informational telling me how many cases have been
11 refiled, that you are working on these duplicate filed
12 cases and cleaning that up, and whose filing short
13 form complaints and what's happening around. I don't
14 know that there is anything we need to discuss about
15 those other jurisdictions. Right?

16 Okay. Are there any other issues that we need
17 to deal with today?

18 MR. LAPINSKI: Yes, your Honor, if we could.

19 JUDGE WOLFSON: Yes, Mr. Lapinski.

20 MR. LAPINSKI: Going back to the report and
21 recommendations of the Special Master, we would like
22 to be able to address the issue of the decision not to
23 allow us to have any fact witnesses at all, but be
24 limited only to 30(b)(6) witnesses. We think that the
25 all or nothing approach of the Special Master to throw

1 out our request for fact-witness depositions was
2 inappropriate.

3 We had submitted a list of 64 potential fact
4 witnesses that was based on an understanding that we
5 were looking at the entire scope of discovery except
6 for case-specific issues. We raised to the Court's
7 attention previously and also to the Special Master's
8 attention that we don't have to do all 64 of those
9 fact depositions prior to the submission of our
10 general causation expert reports.

11 We think that the decision not to allow any
12 fact specific depositions creates an extraordinary
13 circumstance because fact depositions are going to go
14 to the heart of the general causation issue. We can
15 reduce the number of fact depositions that we are
16 looking to take that would be directed at general
17 causation. But we do feel that we should be allotted
18 the opportunity to be able to take some fact-witness
19 depositions. That would include third-party
20 depositions as well, your Honor.

21 The perfect example is, we're discussing
22 30(b)(6) depositions that deal with bias or influence.
23 If we know of a particular individual within the
24 defendants' organization that was directly involved
25 with issues of bias and influence, we think that we

1 have a right to be able to take the deposition of that
2 fact witness because they are going to provide to us
3 information that's going to be relevant to bias, to
4 influence, and can and will be relied upon by our
5 experts in formulating the reports.

6 JUDGE WOLFSON: I think it's premature. This
7 is what I said before. You are getting a lot of
8 leeway on these 30(b)(6) depositions.

9 As I said the last time around, I'll be very
10 surprised if there is only one witness that's
11 identified to deal with all the topics from, for
12 instance, J&J, to deal with all of them, and there
13 will be more than one 30(b)(6) witness. You have to
14 be superman or superwoman I think to deal with all
15 these topics and be educated enough.

16 I think that it's premature as this point to
17 discuss other fact witnesses. What I said is, if
18 these people come in and they are not prepared on the
19 topics that you need to have disclosed, then we are
20 going to revisit more depositions.

21 So until I see where we are on what you get,
22 I'm not going to make a determination that more is
23 necessary. I indicated last time, you are not
24 foreclosed. We'll see where we are.

25 MR. TISI: Your Honor, at the risk of

1 belaboring the point, there is one category that I
2 would like to isolate here as being particularly
3 important.

4 JUDGE WOLFSON: Okay.

5 MR. TISI: What we see in the documents -- and
6 I'm going to be very concrete here. What we see in
7 the documents is the defendants jointly using third
8 parties to try and not only influence the writing of
9 very specific articles, epidemiology studies, meta
10 analyses, et cetera, that the Court has already seen,
11 as well as speaking to IARC and NTP on their behalf.

12 When we take a 30(b)(6) deposition of the
13 defense witnesses, that's fine. We'll find out what
14 they did, money that they paid, the kinds of things
15 that they did to influence the science.

16 But some of the best places that we could go
17 to try to do that is perhaps to the actual person who
18 lobbied the agency themselves on behalf of the
19 company, the author of the article who received the
20 payment who decided to take sections out of an article
21 that were originally in the draft, but were taken out
22 at the request of the defendants. To go and ask the
23 third-party witness themselves is the best place to go
24 to identify that.

25 Again, I'll be even more concrete. There are

1 authors that we understand have taken information out
2 of articles that are actually in the published
3 peer-reviewed literature as a result of requests by
4 the defense.

5 There were people, third-party witnesses, and
6 there are a limited number who were called on to speak
7 to these organizations that made decisions about
8 whether or not the product is a carcinogen or not, who
9 had conversations and went behind the scenes to try
10 and influence the direction that that particular
11 organization was going.

12 And so we believe that there are a limited
13 number of third-party witnesses and we can identify
14 them very easily and I can probably identify them
15 today that we would like to take as an adjunct to the
16 30(b)(6) witnesses of the defendants.

17 I think those are really and important.
18 Speaking to the authors of the articles or the
19 scientists who were contacted to lobby these agencies
20 are perhaps in some instances the best evidence.

21 MS. SHARKO: The plaintiffs now this is the
22 third lawyer to come up and make the same argument.
23 These arguments have been made at hearing after
24 hearing after hearing. Judge Pisano's ruling that we
25 go to 30(b)(6) depositions, broad 30(b)(6)

1 depositions, we submit was the correct one.

2 At this point it's offensive to have the
3 plaintiffs come in and time after time make these
4 accusations that we bought the science, we influenced
5 the scenes.

6 I would ask that Mr. Tisi be ordered to turn
7 over the documents to us that he claims supports what
8 he says, No. 1.

9 No. 2, we should go to the 30(b)(6)
10 depositions and take them, because at the end of the
11 day the plaintiffs have the burden of proof and they
12 have to show it by sound scientific evidence and
13 methodology, and presumably they have that or we
14 wouldn't be here.

15 But what the defendants did or didn't do or
16 conversations they had, A, that's already in the
17 deposition notices; but, B, I don't think it goes to
18 what they have to prove.

19 MR. TISI: In fairness, your Honor, the focus
20 of -- you read the transcript before Judge Pisano.
21 You've heard the discussions here today. 99.9 percent
22 of the focus has been on the defendants' documents,
23 the defendants' witnesses.

24 What I'm talking about are scientists or
25 lobbyists or third parties who are not defendants in

1 this case, and I want to bring those forward because
2 that really hasn't been the focus of what we are
3 talking about here. And candidly I can provide your
4 Honor. I don't feel that I should have to provide my
5 work product to Ms. Sharko.

6 The truth of the matter is, and I can
7 represent it as an officer of the Court, based upon my
8 review of the documents a fair inference is that, yes,
9 there were people who went in and met with scientists
10 in preparation for the meetings that they had and took
11 information out, and we should be able to find that
12 information from the third parties and that hasn't
13 been a focus.

14 I appreciate the defense is trying to kind of
15 put us back in the box of the 30(b)(6) depositions.
16 But the issues related to this product have been going
17 for 30 years and they have used outside people to try
18 and blunt the science. That's our position. It may
19 be offensive to Ms. Sharko, but that's what we think
20 has happened.

21 JUDGE WOLFSON: So your allegation is that
22 they have done things -- when you say to "blunt the
23 science," you mean to skew the science?

24 MR. TISI: To skew the science.

25 JUDGE WOLFSON: To hide some of the science.

1 To change the science that people were going to write
2 about in their studies. I think that's your
3 allegation. Right?

4 MR. TISI: I have examples that I was prepared
5 to bring in for the Court. But there is one instance,
6 for example, where the National Toxicology Program,
7 which is a government body that looks at carcinogens,
8 was considering listing talc as a carcinogen. In
9 preparation for that process, the companies got
10 together -- again, it's clear from the documents.

11 JUDGE WOLFSON: What companies?

12 MR. TISI: Johnson & Johnson, Imerys and PCPC
13 got together. They got a law firm to come in. They
14 got copies of articles that they spoke to several
15 scientists that were about ready to publish articles.
16 They got copies of the articles. They redlined the
17 article. They took information, whole sections out of
18 the articles. The articles were subsequently
19 published. The authors who were involved in the
20 process actually went and participated in the National
21 Toxicology Program for the purposes of influencing
22 whether talc would be listed --

23 JUDGE WOLFSON: None of these authors have
24 been deposed in other litigations?

25 MR. TISI: They have not been deposed.

1 JUDGE WOLFSON: It's amazing this has gone on
2 for years and all the things you are saying were
3 allegedly not done by anyone in any prior case, but
4 okay.

5 MR. TISI: Those were individual cases --

6 JUDGE WOLFSON: That have been tried to
7 conclusion with some of the same counsel that are in
8 this room.

9 MR. TISI: But, your Honor, in fairness what a
10 person in the state court could do and the reach of
11 subpoena power and what they can do --

12 JUDGE WOLFSON: Some were in federal court.
13 Missouri had federal court.

14 MR. TISI: Missouri was in state court, your
15 Honor.

16 JUDGE WOLFSON: Wasn't there a federal court?
17 Isn't there one pending now? I thought there was one
18 in federal court.

19 MR. TISI: If there is now, I don't know of
20 it. But your question was directed towards cases that
21 have been tried to verdict. Those have been state
22 court trials in this case with the exception of the
23 Dakota case years and years and years ago.

24 There have been individual or small groups of
25 cases which were not aggregated, which there is not

1 federal subpoena power, which we did not have the
2 manpower, which we did not have the resources to do
3 the kinds of things that we really wanted to do here.
4 Again, I am prepared to show you those kinds of
5 influences.

6 Ms. Sharko used the word "offensive." I'm
7 going to use the word "frustrating." That's what so
8 frustrating to us because we know that there were
9 scientists who were brought into the fold in order to
10 try and shape and influence the direction of the
11 science which was clearly showing a consistent pattern
12 of an increased risk with nonasbestos form of talc.

13 JUDGE WOLFSON: Let me ask you this: You've
14 apparently gotten some information that says that
15 these scientists were approached whether directly or
16 indirectly by the defendants to modify their articles
17 by excising portions, redlining or whatever.

18 Have you been privy to what was actually
19 removed and how that actually relates to the science
20 of causation?

21 MR. TISI: Yes, your Honor. Again, I have
22 them here and I can show them to you.

23 What happened was part of the presentations
24 was that these authors were to put a balanced section
25 in the article which acknowledges all of the evidence

1 in favor of causation; and the lawyers, the lawyers
2 involved in the cases -- we were provided with the law
3 firm who is actually acknowledged in the article not
4 as a law firm, but they are acknowledged as a
5 contributor to the article, a law firm, which I've
6 never seen happen in all the years I've done this.

7 A law firm is acknowledged in an article as
8 contributing to the article. They are identified as a
9 corporation and not a law firm. Sections were pulled
10 out of the article that would acknowledge that there
11 has been published literature -- in the published
12 literature acknowledging that there is an association,
13 that there is --

14 JUDGE WOLFSON: I want to stop you right there
15 because that's a little bit different than what you
16 were representing.

17 My question to you was: Were they asked to
18 remove actual science of their opinions? What you
19 just explained to me was putting in some kind of
20 paragraph that acknowledges that there were some who
21 have written and acknowledged a causation.

22 We know that there are some people who do. In
23 fact, some of these were the experts that have served
24 for the plaintiffs in the past in these cases
25 including before Judge Johnson down in South Jersey.

1 My question to you was: Was there something
2 that indicates that they actually changed their
3 opinions or removed their own science from the article
4 as opposed to talking about what other people had out
5 there? I understand the bias issue, but I'm trying to
6 get to something more.

7 MR. TISI: Again, would it help your Honor if
8 I showed you what we have? I'm happy to do that.

9 JUDGE WOLFSON: No, because you haven't had
10 it.

11 MS. SHARKO: Unless we get copies.

12 JUDGE WOLFSON: I don't know that I'm ready
13 then for it today. Why don't you show it to your
14 adversary and if we need to discuss this more or you
15 want to present it to Judge Pisano in the first
16 instance to get to the nitty-gritty, that's fine. You
17 can show it.

18 MR. TISI: Okay.

19 JUDGE WOLFSON: Look, I understand that what
20 you are talking about is now some third-party
21 depositions, not the direct defendants. I don't know
22 how many you are talking about. But perhaps if you
23 show what's causing you to have that view that this is
24 critical testimony to the causation issue because you
25 believe it either goes to the bias or somehow skewed

1 the science that was being presented, you can have
2 that discussion. If there is disagreement, you can
3 tee it up to Judge Pisano.

4 MR. TISI: To be clear, your Honor, there are
5 a limited number of witnesses that would fall in this
6 category.

7 JUDGE WOLFSON: Okay.

8 MR. TISI: For example, people who were hired
9 by the defendants to lobby these agencies and authors
10 of articles. But there is a limited number and we
11 will be happy to do that. But I really wanted to
12 specifically carve out the third parties so that you
13 understood.

14 JUDGE WOLFSON: I'm not going to make a ruling
15 on it today. I understand your position. I think
16 it's something you're going to share with the other
17 parties in the case.

18 Yes, Mr. Locke.

19 MR. LOCKE: Just to be clear. I won't address
20 the merits. I think there were a lot of different
21 alleged facts or allegations that are conflating
22 events there.

23 The witnesses Mr. Tisi is talking about are
24 not part of the 62 or 67 previously listed. These are
25 additional witnesses on --

1 MR. TISI: They are. They are, your Honor.

2 MR. LOCKE: I don't think most of the people
3 you just mentioned --

4 MR. TISI: They are in Section 5 of the
5 original list that we did and candidly there are nine
6 of them and we've shrunk them to a handful of them,
7 four of them.

8 MR. LOCKE: I think many of those were
9 actually testing talc products, not the kind of
10 lobbying activities he's talking about.

11 MR. TISI: With all due respect, they are not.

12 JUDGE WOLFSON: We can go round and round.
13 This is not going to help me because I don't know who
14 is on that list. I don't know who they are. You are
15 all more knowledgeable about that. All I've done is
16 say today if this is an issue you want to address,
17 I'll allow you to address it and flesh it out.

18 But certainly I understand that the defendants
19 at this point want to know exactly what it is that you
20 are talking about so they can respond. Maybe you'll
21 reach some agreement, probably not, with Judge Pisano
22 and that's fine. And if that doesn't make you happy I
23 know you'll come to me. So that's okay, too.

24 MR. TISI: Thank you, your Honor.

25 JUDGE WOLFSON: So let's move ahead on that.

1 In the meantime there is plenty to do.

2 Anything else that is left open from the
3 agenda? I know you have some remand motions. We're
4 going to get to them. But beyond that?

5 Okay. Did we select and another date?

6 We can go off the record.

7 (Discussion off the record.)

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C E R T I F I C A T E

I, **Vincent Russoniello**, Official United States Court Reporter and Certified Court Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the proceedings as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in this action.

S/Vincent Russoniello
Vincent Russoniello, CCR
Certificate No. 675

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